

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 18 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RAYMOND YOWELL,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; DIRK
KEMPTHORNE,** Secretary of the
Interior, in his official capacity,

Defendant - Appellee.

No. 07-15086

D.C. No. CV-05-00634-LRH/VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted April 15, 2008
San Francisco, California

Before: KOZINSKI, Chief Judge, GOULD, and N.R. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Dirk Kempthorne is substituted for his predecessor, Gale Norton, as Secretary of the Department of Interior, pursuant to Rule 43(c)(2) of the Federal Rules of Appellate Procedure.

The district court properly dismissed plaintiff's action because he does not have a cause of action under the Administrative Procedure Act, as his complaint is based upon a congressional act, not agency action. *See* 5 U.S.C. §§ 551(1), 701(b)(1). Plaintiff waived his other jurisdiction claims, because either (1) he failed to argue the issues in his opening brief, *see Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986), or (2) he raised them for the first time on appeal, *see Rothman v. Hosp. Serv. of Southern California*, 510 F.2d 956, 960 (9th Cir. 1975).

AFFIRMED.